

## **TEACHERS' RETIREMENT BOARD MEETING**

**February 9, 2007**

### **CALL TO ORDER**

Chairman Scott Dubbs called the meeting to order at 8:30 a.m., in the Teachers' Retirement System Conference Room, 1500 East Sixth Avenue, Helena, Montana.

### **BOARD MEMBERS PRESENT:**

Chairman, Scott Dubbs  
Mona Bilden  
Darrell Layman  
Kari Peiffer  
Tim Ryan  
James Turcotte

### **STAFF PRESENT:**

David L. Senn, Executive Director  
Dave Ohler, Legal Counsel  
Janet Cooper, Benefits Officer  
Dan Gaughan, Accounting/Fiscal Manager  
Bill Hallinan, Information Technology Manager  
Karla Scharf, Retired Payroll Manager

### **OTHERS PRESENT:**

Charlotte Thomas, Retired Teachers' Association  
Darrell Rud, School Administrators of Montana  
Ron Fuller  
Mark Vucurovich, Attorney for Ron Fuller

### **CALL TO ORDER**

**ADOPT AGENDA** - Chairman Scott Dubbs called the meeting to order at 8:42 am. He asked for additions or changes to the Agenda for February 9, 2007. Mr. Darrell Layman moved that the agenda be approved. Seconded by Mrs. Kari Peiffer, the motion carried unanimously.

**APPROVAL OF NOVEMBER 17, 2006 MINUTES** - Chairman Dubbs called for any changes to the November 17, 2006, Board meeting minutes.

Mr. James Turcotte asked that on the bottom of page 3, last paragraph, that the word 'sediment' be changed to 'sentiment'. Mrs. Mona Bilden would like to change on page 8, paragraph 5, 2<sup>nd</sup> sentence, the word 'we're' to 'were'.

**MOTION/VOTE:** Mr. Darrell Layman moved to accept the November 17, 2006, Minutes as corrected. Seconded by Mrs. Kari Peiffer, the motion carried unanimously.

### **PUBLIC COMMENT**

Chairman Dubbs called for public comment on Board related items. Mr. Darrell Rud, Executive Director of Schools Administrators of Montana, stepped forward to make public comment at 8:42 am.

Mr. Rud stated he has concerns with House Bill 63 and does not believe the focus on budget woes are caused by superintendent's looking for loopholes in the system. He also presented that there must be consistencies between income that is used for pre-retirement calculation of average final compensation and the limitation on post-retirement earnings. Mr. Rud offered that this is a critical issue for small schools, and stated that he believes it's also a small part of the Teachers' Retirement System (TRS) funding problem. Mr. Rud added he believes in the system, that it needs to be fixed; and this fix is headed in the wrong direction.

Chairman Dubbs called for any other public comment on Board related items and finding none, asked Mr. Senn for the Executive Director's Report.

### **Executive Director's Report – David Senn**

**HB 63** - Mr. Senn recommended that the Board consider amending HB 63 to exclude the value of housing provided by an employer. There are some smaller districts that provide housing to teachers and administrators as part of their contract. In support of closing the loopholes, Mr. Senn reported that a recent comparison of the TRS retired database with employers' Annual Data Collection (ADC) report submitted to Office of Public Instruction found a few "working retirees" who were reported as being employed full-time on the employer's ADC report, while reported as "part-time" for TRS purposes. Mr. Senn gave several examples of the types of errors that were discovered.

Mr. Scott Dubbs reported that he testified on HB 63. Mr. Dubbs added that there is a definite problem where smaller schools are trying to hire superintendents to run their school on 1/3<sup>rd</sup> salary, but that they should not use the retirement system to solve their employment problems. He added he is not aware of any district that has a part-time superintendent that can run a school efficiently.

Mr. Turcotte commented that he, too, felt schools need a full-time superintendent to run a school district. He wondered how a retired person could run a district with 1/3<sup>rd</sup> salary.

Mr. Rud added he felt this was a desperate measure to get 'superintendents' in small school districts and there are only a few district using retired superintendents. He felt the hearing focused too much on the issue of superintendents earning more than a 1/3<sup>rd</sup> salary.

Mr. Tim Ryan mentioned he is sympathetic to the problem of retaining and recruiting qualified superintendents. He expressed there are solutions out there, but there are also costs for those solutions, and they should not be passed on to the retirement system. The Board cannot allow the increase in unfunded liabilities.

Mrs. Kari Peiffer asked if we knew what the projected costs would be if we allowed retirees to return to full-time employment while continuing to receive retirement benefits. Mr. Dubbs responded approximately 2.0% - 3.0% of salary or around \$20 million a year.

Mr. Rud added that it is the smaller schools that are in trouble. Who will go and teach if the part-time superintendent can not do the job?

Mr. Senn addressed several other bills affecting the TRS and provided the Board with a list of the bills he is following on behalf of the Board this session.

### EXECUTIVE SUMMARY

Mr. Senn reported that Rocky Boy Schools had an administrator who retired after having signed her Termination Pay - Irrevocable Election Form, and then the District agreed not to report the termination pay to the TRS. We advised the district that the election form is a legal binding contract and that they had until February 16, 2007, to remit the contributions due TRS.

Mr. Senn presented a report on House Bill 178, from the 2003 Session, which authorized school districts to employ retired teachers, specialists, or administrators who had been receiving a retirement allowance for at least 12 months. Individuals reemployed in a full-time teaching, specialist, or administrator position under this act were allowed to continue to receive teacher retirement benefits regardless of the amount they earned. The report showed that only three teachers returned to work under this law, and that while all earned more than one-third of their average final compensation, none of the teachers earned a full-time salary. The bill sunset June 30, 2006.

### INDIVIDUAL PETITION – RON FULLER

Mr. Mark Vucurovich, Attorney for Ron Fuller, reviewed the status of Mr. Fuller's position as it relates to the benefits he wrongly received from the Montana Teachers' Retirement System after his earnings as a working retiree exceeded the maximum he was eligible to earn.

Mr. Fuller presented to the Board the various medical issues he has faced since 1965 and how they led to his part-time teaching in 1997. Mr. Fuller reiterated that the school was well aware he was on retirement, and they guaranteed they would protect his retirement.

Mr. Fuller stated that at first the school suggested they would report his hours to game warden retirement, and then they decided Public Employees' Retirement System (PERS). Mr. Fuller indicated he went along with their decision since he was considered temporary and was not hired on a regular basis. Mr. Fuller further explained that all his hire letters indicated he would be reevaluated later on with no contract. They told him they did not have a position for a principle and he was placed in other positions. Mr. Fuller told the Board he did call TRS and talked about making more money and asked if this would create problems with his retirement.

Mr. Fuller told the Board that in 2006 the school offered him a  $\frac{3}{4}$  time position and is now contributing to TRS, before that he wasn't a principal as such. He was not aware of what the

school was doing in the background, but he made it clear to the school that he would not take a position that would affect his retirement.

Mr. Fuller further expressed that he does not feel he is responsible for what happened. He had not worked for the State before, and he relied on those who knew how the process was handled. He informed the Board that he has continued working, even though he is 72 yrs old, has worked 40 years with kids, and would like to retire, but he cannot survive on \$800 a month.

Chairman Dubbs asked Attorney Mark Vucurovich if he had any further comments.

Attorney Vucurovich stated that Mr. Fuller was an innocent victim. Mr. Vucurovich reminded the Board that the school was always trying to decide where to put Mr. Fuller's retirement and for all intense purposes, the school should know that teacher's funding goes to TRS. Mr. Vucurovich stated that whatever the Board decides, they will abide. However, he wanted it known that he feels the school is the one responsible for this situation. The Department's admission that Mr. Fuller was not classified in a principal position, yet they put Mr. Fuller in that position, indicates negligence on their part.

Chairman Dubbs asked Mr. Senn about documents on file, and noted that in listening to Mr. Fuller it appeared that the principal part of this problem started around 2004-2006.

Mr. Senn presented backup data for Mr. Fuller's positions over the years. Mr. Senn pointed out that the real issue is that Mr. Fuller was in a TRS position and that he exceeded the amount he was eligible to earn as a working retiree.

Mr. Fuller responded that the school had asked him to help. He was not sure of the hours or the dollar amounts he was restricted to. It all started out as part-time and he did not know how long that it was going to last. Mr. Fuller added that he was also working as a substitute teacher for a social studies teaching position at the time. Time just kept going and the school continually told him that they would protect this retirement and they knew he was receiving benefits. He told the school he would not do this if it affected his retirement.

Mr. Ryan asked at what time did Mr. Fuller attempt to contact TRS?

Mr. Fuller answered; he contacted TRS in 2004 and was told that this could not happen. In 2005 he got a letter from Karla Scarf, and she referred to the laws affecting his retirement. He called Mrs. Scarf back and spoke with Mr. Senn. Mr. Fuller added he called TRS many times and did not feel he got any satisfaction from those conversations.

Mr. Ryan asked Mr. Fuller if he was aware of the 1/3<sup>rd</sup> law.

Mr. Fuller stated he was aware of the 1/3<sup>rd</sup> law, but pointed out that he was sick at first and needed the money. Later he felt the school knew what they were doing, he trusted them, and Mr. Fuller went along with the school handling this situation. Mr. Fuller told the Board it frankly boiled down to that he needed the money then and he still does, due to medical costs.

Mr. Senn asked Mr. Fuller if he shared the letters, he received from Karla Scarf, with the Department of Corrections.

Mr. Fuller answered he did share all the letters from TRS with the Department of Corrections and actually she was sending them a carbon copy, also.

Mr. Senn asked Mr. Fuller, that when he was hired, if he felt the school was aware of the situation?

Mr. Fuller answered he felt the school was aware of the situation. He reiterated that he did have concerns himself, but he liked his work and needed to work to keep himself going. At the same time, he left it in the school's hands, because they should have known how to handle things. He trusted them.

Mr. Dubbs asked if there was any further documentation that would help the Board. Mr. Fuller indicated he provided all his documentation.

Mr. Ryan stated that he concurs with council's recommendations, that the law is pretty clear as to the Board's responsibility and the Board has a fiduciary responsibility to the TRS in this case. Mr. Ryan stated it is quite clear to him that the argument is not with the TRS.

**MOTION:** Mr. Ryan moved to deny Mr. Fuller's request that the Board waive repayment of the benefits he received in error, plus interest.

Chairman Dubbs asked Mr. Senn if there were any other options, such as not including interest.

Mr. Ryan voiced his concern that every time we forgive interest we set precedence, and the interest here is significant. Mr. Ryan added that he believes that after council has entered into discussions with the Department of Corrections, that we could keep the door open, but he would not encourage interest reduction to be part of this motion.

**MOTION:** Mrs. Kari Peiffer seconded Mr. Ryan's motion.

FURTHER DISCUSSION: Mrs. Peiffer added that she agrees with Mr. Ryan. Mr. Fuller was wronged but not by the TRS.

**MOTION/VOTE:** The motion carried; Mr. Turcotte abstained.

#### **INDIVIDUAL PETITION –EDWARD FOLEY**

Mr. Edward Foley asked that his petition be postponed until the May 18th Board meeting.

#### **LEGAL COUNCIL REPORT - Mr. Dave Ohler**

Mr. Ohler informed the Board that Mr. Merle Farrier filed a motion for judgment in District Court. On January 2, 2007, we responded with a petition asking the Court to enter judgment in our favor on our counter-claim that we filed some time ago, seeking repayment of benefits and interest. Mr. Farrier responded to our petition by filing a brief late in January. Mr. Ohler told the Board he has filed a response brief. Mr. Farrier has requested oral argument, and Mr. Ohler

informed the Board he assumes the Court will grant the request. Mr. Ohler added that on February 6, 2007, Mr. Farrier sent Mr. Senn a letter offering to settle our dispute. Mr. Ohler recommended the Board close the meeting to discuss the settlement agreement from Mr. Farrier.

At 11:00 A.M. Chairman Dubbs Closed the Board Meeting to discuss Mr. Farrier's case.

At 11:23 A.M. Chairman Dubbs reopened the meeting to the public.

**MOTION/VOTE:** Mr. Turcotte moved to decline Mr. Ferrier's proposal without a counter offer. It was seconded by Mr. Layman.

Chairman Dubbs asked for any further discussion. Mr. Ryan stated we should indicate we have already initiated proceedings, and that the motion should direct Mr. Ohler to respond to Mr. Farrier.

Mr. Turcotte amended his motion to direct Attorney Ohler to respond to Mr. Farrier's offer.

**MOTION/VOTE:** After seeing no further discussion or public comment, the motion carried unanimously.

**LEGAL ISSUE:** Mr. Ohler presented another legal issue to the Board regarding a beneficiary who was receiving survivor benefits, living in Denmark. The TRS did not learn of Inger T. Davidson's death for a couple of years, therefore, her retirement checks were automatically deposited into her Merrill Lynch account. Once the TRS staff learned of her death, they contacted her family and they in turn contacted Merrill Lynch. The TRS advised Merrill Lynch of the payment due the TRS. As of this date, the TRS has not received reimbursement for these over payments.

Mr. Ohler advised the Board that a letter has been sent to Merrill Lynch, giving them a month to repay the benefits they are holding and advised them we will take other action if they do not refund the amount owed.

Mr. Ohler asked the Board if they would like him to institute legal proceedings if the TRS does not receive a response from Merrill Lynch.

Mr. Turcotte suggested Mr. Ohler immediately contact the Security and Exchange Commission (SEC) and inform them we have submitted these requests, and that they have illegally deposited these funds into the account of a deceased person.

**MOTION/VOTE:** Mr. Turcotte made a motion to direct counsel to contact the SEC immediately with regard to these funds. The motion was seconded by Mr. Ryan. After seeing no further discussion or public comment, the motion carried unanimously.

#### **FIDUCIARY DUTY OVERVIEW:**

Mr. Ohler provided the Board with a guideline and reviewed several areas of interest regarding fiduciary duties and standards of conduct. He shared information regarding the fiduciary duty to

the retirement system. Mr. Ohler shared the Common Law of Trusts and how it affects the TRS Board. In addition, Mr. Ohler included information on the General Standard of Prudent Investments, Duty of Loyalty, Duty to Deal Impartially with Beneficiaries, and Duty to Make the Trust Property Productive. He provided the Board with a Code of Ethics that would apply to the Board.

Mr. Layman asked if an offer of an airline ticket would be considered a gift. Mr. Ohler answered, yes, it would be perceived as a gift. The best policy is to decline.

#### OTHER BUSINESS:

Out of State Travel Authorization: There is an out-of-state travel authorization for David Ohler to attend the National Association of Public Pension Attorneys, June 25 through June 29, 2007, in Vail, CO.

MOTION/VOTE: Mr. Ryan made a motion to approve the travel authorization for Mr. Ohler. The motion was seconded by Mrs. Pfeiffer. After seeing no further discussion or public comment, the motion carried unanimously.

#### INVESTMENT REPORT

Mr. Turcotte reported that during the last quarter the Board of Investments reallocated all of the international side of the investment allocation, which cost approximately a million dollars. Mr. Turcotte added the PERS asset liability study is being done and will be presented at the Board's next meeting.

Mr. Ryan commented that not much happened with the Joint Issues Committee Meeting. There was discussion on issues before the Legislature and where there may be common understanding. They discussed the Governor's budget and his intentions to help with the unfunded liability of the Teachers' Retirement System. Mr. Ryan added that he felt those meetings were worthwhile but thought it might be restructured.

#### COMPREHENSIVE ANNUAL FINANCIAL REPORT

Mr. Dan Gaughan presented the Comprehensive Annual Financial Report for the year ending June 30, 2006. He informed the Board that the reason for the new report was to qualify for the Government Finance Officers Association (GFOA) Certificate of Achievement for Excellence in Financial Reporting. We should find out if we qualified in May or June.

Mr. Gaughan reviewed the new areas of the report and disclosed how GFOA standards affect TRS. He shared with the Board that TRS did get the Public Pension Coordinating Council Award for the current year (2006) Report. He also reviewed the differences between the old and new reports in each section.

Mr. Layman complimented Mr. Gaughan on the new Comprehensive Annual Financial Report.

## FINANCIAL STATEMENT

Mr. Gaughan presented the financial statements.

## BUDGET STATUS REPORT

Mr. Gaughan indicated we have approximately \$3,000 of unused funds on the books that the Board approved for a remodel that we elected not to complete. Mr. Gaughan also pointed out that expenditures, in contracted services, are running under budget as a result of lower than expected fees for consulting professional services. We budgeted \$85,000 and have spent only \$6,000 so far this year. Mr. Senn informed the Board that there are several legislative proposals that will require substantial actuarial work, but he doubted we will spend anywhere near what we had anticipated.

Mr. Gaughan informed the Board that information technology projects are coming along slower than anticipated for this year; therefore, we foresee that we may need to carry some of this year's budget over into next year.

Mr. Ryan asked about the audit fees. Mr. Gaughan explained that the Legislative Auditor bills agencies on a monthly basis for the hours spent each month. However, because the total hours that will be spent in each fiscal year are unknown at the beginning of each biennium, each year's budget reflects half of the appropriated amount for the two fiscal years. Mr. Ryan pointed out we have used 80% of the audit budget already, and asked if it meant we will go over this budget? Mr. Gaughan responded that the audit fee is a fixed budget amount for the biennium; therefore, the Legislative Auditor will have to live within the amount appropriated for the biennium.

DELINQUENT AGENCY REPORT Mr. Gaughan reported that there were currently no school districts reporting late.

RETIREMENT REPORT Mr. Senn presented the retirement report.

Mr. Dubbs commented he appreciated the format changes in the report.

KARLA SCHARF – 30 YEARS OF DEDICATED SERVICE - Mr. Senn asked the Board to acknowledge Karla Scharf's 30 years of dedicated service with the Montana Teachers' Retirement System. He presented Karla with a plaque and a 30-year service pin. The Board expressed their heart-felt gratitude.

Karla responded with her appreciation for the presentation and added she loves working with the retirees.

## CLOSED MEETING

Chairman Dubbs directed the meeting closed at 12:35 PM to review disability applications since the individual's right to privacy of information pertaining to medical information clearly exceeds the merits of public disclosure.

## OPEN MEETING

Application for Disability Retirement Benefits – The meeting was reopened to the public at 1:10 PM.

**MOTION/VOTE:** Mr. Ryan moved to approve the disability application for Susan Niesslein. The motion was seconded by Mrs. Bilden. The motion carried unanimously.

**MOTION/VOTE:** Mr. Ryan moved to approve the disability application for Kim Kirby. The motion was seconded by Mr. Layman. The motion carried unanimously.

## MEETING DATE FOR NEXT BOARD MEETING

Mrs. Peiffer asked if the Board could reschedule the May 11<sup>th</sup> Board meeting to May 4<sup>th</sup> or May 18<sup>th</sup>, since she had a conflicting commitment on May 11<sup>th</sup>.

**MOTION/VOTE:** Mr. Turcotte moved to approve the next Board meeting dates as May 18, September 7, and November 16, 2007. The motion was seconded by Mr. Ryan. The motion carried unanimously.

## ADJOURNMENT:

There being no further business, the meeting was adjourned at 1:22 PM.

Chairperson \_\_\_\_\_

Executive Director \_\_\_\_\_